CASE NO. 83CI-261 NELSON CIRCUIT COURT
CHARLES MONIN, ET AL PLAINTIFFS
VS.
JOSEPH E.MONIN, ET AL DEFENDANTS

AND

CASE NO. 83CI-242 NELSON CIRCUIT COURT
THELMA MONIN, ETC., ET AL PLAINTIFFS
VS.
CHARLES K.MONIN, JR. DEFENDANTS

AND

CASE NO. 85CI-021 NELSON CIRCUIT COURT
CHARLES MONIN, ET AL PLAINTIFFS
VS.
JOSEPH E. MONIN, ET AL DEFENDANTS

AND

CASE NO. 87-CI-073 NELSON CIRCUIT COURT
DONALD LEO MONIN, ET AL PLAINTIFFS
VS.
PAUL B. MONIN,ET AL DEFENDANTS

AND

CASE NO. 90-CI-161 NELSON CIRCUIT COURT
CHARLES KELM MONIN,JR.,ET AL PLAINTIFFS
VS.
PAUL BALLARD MONIN,ET AL DEFENDANTS

AND

CASE NO. 84-P-140 NELSON DISTRICT COURT
ESTATE OF THELMA MONIN, DECEASED
AND
CASE NO. 87-P-028 NELSON DISTRICT COURT
ESTATE OF CHARLES K. MONIN, SR., DECEASED

* * * * * * *

ORDER HOLDING IN CONTEMPT AND FOR ARREST

This cause coming on for hearing on this date and Charles K. Monin, Jr. not present, and it appearing at this time and on this date, and that the Court has heretofore orally and by order required the carrying out of all things necessary to affect the settlement agreement heretofore made February 3, 1991, and Mr. Charles K. Monin, Jr. not present and had no reason for his failure to do so, HE IS HEREBY HELD IN CONTEMPT OF COURT.

The Sheriff of Nelson County IS HEREBY ORDERED to arrest Charles K. Monin, Jr. and incarcarate him in the Nelson County Jail for a period of thirty (30) days or until he does the steps necessary to carry out the settlement agreement of February 3, 1991.

This 27th day of March, 1992.

Larry D.Raikes,
JUDGE, NELSON CIRCUIT COURT
Entered: 3/27/92

CASE NO. 83CI-261 NELSON CIRCUIT COURT
CHARLES MONIN, ET AL PLAINTIFFS
VS.
JOSEPH E.MONIN, ET AL DEFENDANTS

AND

CASE NO. 83CI-242 NELSON CIRCUIT COURT
THELMA MONIN, ETC., ET AL PLAINTIFFS
VS.
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AND

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ESTATE OF THELMA MONIN, DECEASED
AND
CASE NO. 87-P-028 NELSON DISTRICT COURT
ESTATE OF CHARLES K. MONIN, SR., DECEASED

* * * * * * *

SUPPLEMENTAL ORDER

This matter having come on for hearong on March 27, 1992 and an order having been entered on that date,it is hereby ordered and adjudged as follows:

1. That Charles K. Monin, Jr. shall be incarcerated for a period of thirty days or until he does the steps that he can do necessary to carry out the settlement agreement of February 3, 1991.

2. Motion having been made for bond pending an appeal of the Order entered on March 27th as supplemented herein, said motion be and the same is hereby denied.

Larry D.Raikes,
JUDGE, NELSON CIRCUIT COURT
Entered: 3/30/92

CIVIL REVIEW DOCKET (NON-DOMESTIC)
AOC-950
11-87 Date: August 19, 1992
Commonwealth of Kentucky Time: 9:00 a.m.
Court of Justice

CALENDAR

Nelson Circuit Court - Larry D. Raikes, Judge

Case No.	Style
1. 83-CI-242	THELMA MONIN, ET AL Atty. John Saltsman, Jr. vs. CHARLES K. MONIN, JR., ET AL Atty. John Hubbard
2. 83-CI-261	THELMA MONIN Atty. John W. Saltsman, Jr. vs. CHARLES K. MONIN, JR.,ET AL Atty. John Hubbard
3. 87-P-028	CHARLES KELM MONIN, SR. Atty. Challen McCoy
4. 84-P-140	THELMA BALLARD MONIN (TESTATE) Atty. Challen P. McCoy
5. 90-CI-161	CHARLES K. MONIN, JR. ET AL Atty. John D. Hubbard vs. PAUL BALLARD MONIN, ET AL Atty. John S. Kelley, Jr.
6. 87-CI-073	DONALD LEO MONIN Atty. John D. Hubbard vs. PAUL B. MONIN, ET AL Atty. Challen P. McCoy

7. 85-CI-021 CHARLES MONIN, ET AL
Atty. John Hubbard
vs.
JOSEPH E. MONIN, ET AL
Atty. John S. Kelley

CHARGES OR CLAIM:
1. EVIDENTIARY HEARING
2. EVIDENTIARY HEARING
3. EVIDENTIARY HEARING
4. EVIDENTIARY HEARING
5. EVIDENTIARY HEARING
6. EVIDENTIARY HEARING
7. EVIDENTIARY HEARING

PROCEEDINGS:
1-7: Motion for evidentiary hearing denied until such time as Court of Appeals sets aside Contempt Order or Mr. Charles Monin satisfies Contempt Order.
ENTERED: 1/19/92 DIANE THOMPSON, Clerk
Nelson Circuit & District Courts
By: Deputy Clerk

CIVIL REVIEW DOCKET (NON-DOMESTIC)
AOC-950
11-87 Date: August 19, 1992
Commonwealth of Kentucky Time: 9:00 a.m.
Court of Justice

CALENDAR

Nelson Circuit Court - Larry D. Raikes, Judge

Case No.	Style
8. 83-CI-242	THELMA MONIN, ET AL Atty. Saltsman, Jr. vs. CHARLES K. MONIN, JR. Atty. Hubbard

CHARGES OR CLAIM:

PROCEEDINGS:

Motion to remove Charles K. Monin overruled.
Motion to vacate contempt order overruled.
Emergency order to be entered (last word is illegible).

ENTERED: 5/13/92
DIANE THOMPSON, CLERK
Nelson Circuit & District Court
By: Deputy Clerk

RENDERED: JULY 2, 1993; 10:00 a.m.
NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NOS. 92-CA-1506-MR, 92-CA-1507,
92-CA-1508-MR, 92-CA-1509-MR,
92-CA-1510-MR, 92-CA-1511-MR,
AND 92-CA-1512-MR

CHARLES K. MONIN, JR. APPELLANT

vs. APPEALS FROM NELSON CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NOS. 83-CI-242, 83-CI-261,
85-CI-21, 87-CI-73, 90-CI-161, 84-PO-140
and 87-PO-28

JOSEPH E. MONIN; JAMES A. MONIN;
THOMAS RAPHAEL MONIN, MARTHA WHEELER;
WILLIAM MONIN; CAROLYN BACKHERMS;
LINDA ROBY; PAUL MONIN; DONALD MONIN;
MONIN, INC.; SONNY MONIN, INC.; CHARLES
K. MONIN, SR.; THELMA MONIN; AND THE
ESTATES OF CHARLES K. MONIN, SR. AND
THELMA MONIN, DECEASED APPELLEES

AND NOS. 92-CA-2165-MR, 92-CA-2166-MR,
92-CA-2167-MR, 92-CA-2168-MR,
92-CA-2169-MR, 92-CA-2170-MR, and
92-CA-2171-MR

CHARLES K. MONIN, JR. APPELLANT

V. APPEALS FROM NELSON CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NOS. 83-CI-242, 83-CI-261,
85-CI-21, 87-CI-73, 90-CI-161,
84-PO-140 and 84-PO-28

JOSEPH E. MONIN, JAMES A. MONIN;

THOMAS RAPHAEL MONIN; MARTHA WHEELER; WILLIAM MONIN; CAROLYN BACKHERMS; LINDA ROBY; PAUL MONIN; DONALD MONIN; MONIN, INC.; SONNY MONIN, INC.; CHARLES K. MONIN, SR.; THELMA MONIN; THE ESTATES OF CHARLES K. MONIN, SR., AND THELMA MONIN, DECEASED; CHALLEN P. McCOY; JOHN DOUGLAS HUBBARD; JOHN SALTSMAN; JOHN S. KELLEY; HANDMAKER & SEILLER; KELLEY & KELLEY; SALTSMAN & WILLETT; BEN HAYDON; TERRY HAWKINS OF MORRIS, SILVERTHORN & DUTTON; FULTON, HUBBARD & HUBBARD; McCOY & SEAY; J.C. GREENWELL; MS. J.C. GREENWELL; BROWN, TODD & HEYBURN; BILL BROWN; AND THEIR ASSIGNS, SUCCESSORS, PARTNERS AND PROFESSIONAL FIRMS APPELLEES

OPINION AND ORDER

DISMISSING APPEALS NOS. 92-CA-1506-MR 92-CA-1507-MR, 92-CA-1508-MR, 92-CA-1509-MR, 92-CA-1510-MR, 92-CA-1511-MR, and 92-CA-1512-MR

AFFIRMING APPEALS NOS. 92-CA-2165-MR, 92-CA-2166-MR, 92-CA-2167-MR, 92-CA-2168-MR, 92-CA-2169-MR, 92-CA-2170-MR and 92-CA-2171-MR

* * * * * * * * * * * * * * * * *

BEFORE: Howerton, Johnston & Wilhoit, Judges.

JOHNSTONE, JUDGE: These fourteen consolidated appeals represent but the latest chapter in a saga of litigation that over a span of ten years has consumed the Monin

family and exhausted the patience of the Nelson Circuit Court. We are admittedly at a loss as to why appellant chose to file fourteen separate actions in this Court as resolution of the matter before us centers upon a single issue: whether the circuit judge erred in holding appellant in contempt for his disregard of orders directing him to take the steps necessary to effectuate a settlement agreement disposing of two probate matters and five civil suits. Our careful review of this somewhat difficult and confusing record in light of the arguments presented convinces us that the purported appeals from the order entered March 27, 1992 are untimely and that the decision of the trial judge on the CR 60.02 motion must be upheld.

The complex set of facts relative to the underlying litigation in this case is well known to the parties and will not be

reiterated except as necessary to an understanding of our opinion. Suffice it to say that as far as these appeals are concerned, the pertinent facts commence on February 3, 1991, with the execution by all parties of a settlement agreement disposing of all claims in the seven underlying legal matters. Under the terms of this agreement (which, contrary to appellant's statement in his brief, is included in the record on appeal as an attachment to a motion filed on August 26, 1991), appellant was required to take certain steps in the form of transferring stock, incorporation of a new company and closing the parties' father's estate. Appellees first moved to compel appellant to carry out the terms of the agreement on May 20, 1991. At the hearing on this motion, appellant raised concerns about potential tax liabilities that he might incur resulting from what he alleged was an

undervaluation of Monin, Inc., stock. The trial judge, citing appellant's refusal to perform his duties as co-executor of his father's estate, ordered that appellee Joseph E. Monin be empowered to settle the estate without the participation of appellant.

In July, 1991, appellant was ordered to refrain from any interference with the survey of land owned by Monin, Inc. That order included a provision stating that any violation of the order would be punishable by contempt. Appellees then filed motions dated August 26, 1991, and September 5, 1991, again seeking compliance with the terms of the agreement. On December 6, 1991, a hearing was conducted at which appellant repeated his concerns over federal estate tax problems. The trial judge directed all parties to do everything they had agreed to do and clearly stated that anyone violating the order risked the sanction of jail. By order dated December 23, 1991, the trial judge mandated

compliance with the settlement agreement within thirty days.

Appellees' next motion to compel appellant to perform his obligations under the settlement agreement resulted in an order dated March 25, 1992, requiring appellant's personal attendance at a hearing set for March 27, 1992, "for the purpose of determining whether they [appellant and his brother Donald] should be held in contempt of court for failure to carry out the judgment heretofore ordered done." Appellant failed to attend the hearing on that date and his counsel who was present stated that he no longer represented appellant individually, but only in his capacity as co-executor. Counsel did advise the court, however, that appellant was aware of the hearing. An order finding appellant in contempt was issued that same date. A subsequent supplemental order denying bond was entered on March 30, 1992

and on May 7, 1992, the trial judge denied appellant's CR 59 motion. This order was entered of record May 13, 1992.

Appellant filed the first seven notices of appeal on June 12, 1992, from the orders entered March 27, 1992, March 30, 1992, and May 13, 1992, holding appellant in contempt and denying his motion for CR 59 relief. An immediate stay of the contempt order was entered by this Court on July 2, 1991 and on August 31, 1992, appellant was granted a stay pending appeal.

On August 7, 1992, appellant filed in the circuit court a CR 60.02 motion requesting an evidentiary hearing, accompanied by an affidavit explaining his failure to attend the March 27, 1992 hearing and again addressing his concerns about potential civil and criminal liability under federal and state tax laws. At a hearing on August 19, 1992, the trial judge stated that

he would not hear anything as long as appellant was in contempt and declined to grant appellant any relief until the Court of Appeals resolved the contempt matter. Not surprisingly, this ruling precipitated the second series of notices of appeal which were consolidated with the previous appeals by order of this Court on October 2, 1992.

As a preliminary matter, we must address the timeliness of the notices of appeal filed June 12, 1992. Appellant correctly acknowledges that the timeliness of these notices of appeal is dependent upon the timeliness of his CR 59 motion filed on April 10, 1992. Unfortunately, we are constrained to hold that the CR 59 motion was not timely as to the order of contempt entered March 27, 1992. Although the CR 59 motion was timely as to the order entered March 30, 1992, that supplemental order did no more than make reference to the order of contempt entered March 27, 1992, and deny bond pending appeal.

It cannot legitimately be construed as in any way modifying the previous contempt order, nor more importantly, as extending the time for moving to alter or amend the order of contempt. The language of the March 30, 1992 order is far too clear to admit of any other interpretation. With the failure of the CR 59 motion to stop the time for filing a notice of appeal, the decision of the circuit judge became final 30 days after March 27, 1992. The appeals based upon the June 12, 1992 notice of appeal must, therefore, be dismissed.

Turning our attention to the appeals based upon appellant's CR 60.02 motion for relief from the order requiring compliance with the settlement agreement and from the order of contempt, we find no basis for disturbing the denial of the requested relief. Noticeably absent from the litany of proceedings in the circuit court after

execution of an agreement intended to put this litigation to rest is any motion to set the settlement aside on the basis of fraud, mistake or any other legally acceptable reason. We cannot fault the trial court's understandable reluctance to conduct an evidentiary hearing under CR 60.02 on matters that appellant had every opportunity to bring before the trial judge by appropriate motion for at least thirteen months prior to being held in contempt, but for some unknown reason chose not to. Merely voicing vague "concerns" in response to repeated motions to compel compliance was, in our view, clearly insufficient. As stated in Schott v. Citizens Fidelity Bank & Trust Company, Ky. App., 692 S.W.2d 810, 814 (1985), "...the determination to grant relief from a judgment or order pursuant to CR 60.02 is one that is generally left to the sound discretion of the trial judge with one of the chief factors guiding it being the moving party's ability

to present his claim prior to the entry of the order sought to be set aside." It borders on the frivolous to suggest that appellant had no such opportunity in this case.

Finally, appellant mentions in his brief, but does not directly argue, that he was not served with notice of the March 27, 1992 hearing. Appellant directs us to no authority to support the proposition that actual notice of the contempt hearing is inadequate for due process purposes. It is undisputed that appellant's counsel of record had actual notice that his client's attendance was required. Appellant admits in his affidavit that he was aware of the hearing and had informed his counsel that he intended to be present, but chose not to attend due to an unanticipated business problem. We find appellant's contention that he was unaware that his personal attendance

was required to be, at best, disingenuous when his pattern of conduct in response to direct orders of the court can be described only as flagrant disregard. It must be emphasized that the order of contempt was predicated not only on appellant's failure to appear, but also upon his repeated refusal to effectuate the agreemnt as directed by the court. There is simply no question but that the trial judge's oral directive to appellant's counsel that his client be present on March 25, 1992 , followed by a written notice to counsel of record constituted legally sufficient notice of the contempt hearing to satisfy due process. See Am. Jur. 2d, Contempt Section 284 and Annotation; Sufficiency of notice to, or service upon, contemnor's attorney in civil contempt proceedings, 60 A.L.R.2d 1244.

Appeals numbers 92-CA-1506-MR through 92-CA-1512-MR are hereby DISMISSED. The

judgment in appeals n umbers 92-CA-2165

through 92-CA-2171-MR are AFFIRMED.

ENTERED: July 2, 1993 Martin E. Johnstone
Judge, Court of Appeals

ALL CONCUR.

ATTORNEY FOR APPELLANT:
Hon. Marshall V. Gaither
Pewee Valley, Ky.

ATTORNEYS FOR APPELLEES:
Hon. John Saltsman
Saltsman & Willett
Bardstown, Ky.

Hon. Sue Boone
Bardstown, Ky.

Hon. John S. Kelley, Sr.
Hon. John S. Kelley, Jr.
Kelley & Kelley
Bardstown, Ky.

Hon. Bill Brown
Bardstown, Ky.

Seiller &
Handmaker
Louisville, Ky.

Hon. Challen McCoy
McCoy & Seay
Bardstown, Ky.

Brown, Todd & Heyburn
Louisville, Ky.

Hon. Ben Haydon
Bardstown, Ky.

Hon. John Douglas Hubbard
Bardstown, Ky.

Hon. Terry Hawkins
Morris, Silverthorn & Dutton
Louisville, Ky.

Mr. & Mrs. J.C. Greenwell
Bardstown, Ky.

SUPREME COURT OF KENTUCKY
93-SC-547-D
(92-CA-1506; 92-CA-1507;
92-CA-1508; 92-CA-1509;
92-CA-1510; 92-CA-1511
AND 92-CA-1512)

CHARLES K. MONIN, ETC. MOVANT

NELSON CIRCUIT COURT
83-CI-242; 83-CI-261;
85-CI-21; 87-CI-73;
90-CI-161; 84-P-140;
AND 87-P-28

JOSEPH E. MONIN, ET AL RESPONDENTS

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied. The motion for intermediate and emergency relief pursuant to CR 76.33 is denied as moot.

ENTERED November 17, 1993.

Robert F. Stephen
Chief Justice